

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STANLEY LEONARD BURTON,)	
)	
Plaintiff,)	
)	
vs.)	2:04-CV-1192-PWG
)	
SHELBY COUNTY SHERIFF, et. al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on October 13, 2004, recommending that plaintiff's amended complaint be dismissed for plaintiff's failure to comply with 28 U.S.C. § 1915(g), and because plaintiff's amended complaint is unrelated to the original complaint in this action. In the alternative, the magistrate judge recommended that all claims in plaintiff's amended complaint (Doc. 5) against Sgt. George, Officer Hughes, Deputy Freeman, and Lt. Smitherman be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). In so doing, the magistrate judge specifically excluded the following factual allegations from dismissal, but only to the extent same might be offered in support of plaintiff's constitutional claims in his original complaint: that plaintiff complained about a sore throat to defendant Hughes on February 11, 2004, but Hughes told plaintiff to get out his face.

The magistrate judge further recommended that all claims in plaintiff's original complaint (Doc. 1) against all defendants named in the original complaint, with the exception of plaintiff's inadequate medical care claims against Nurse Nina, be referred to the magistrate judge for further proceedings in accordance with the Special Report process. As such, the magistrate judge recommended that the claims against Nurse Nina be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the

magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED as follows:

1. Plaintiff's amended complaint (Doc. 5) is due be DISMISSED for plaintiff's failure to comply with 28 U.S.C. § 1915(g), and because plaintiff's amended complaint is unrelated to the original complaint in this action. Even if the amended complaint were not due to be dismissed on the foregoing grounds, all claims as set out in plaintiff's amended complaint (Doc. 5) against Sgt. George, Officer Hughes, Deputy Freeman, and Lt. Smitherman are due to be DISMISSED for failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). Excluded from this dismissal is the factual allegation that plaintiff complained about a sore throat to defendant Hughes on February 11, 2004, to which Hughes responded by telling plaintiff to get out his face. This factual allegation shall only be considered in future proceedings to the extent same might be offered in support of plaintiff's constitutional claims in his original complaint.

2. All claims in plaintiff's original complaint (Doc. 1) against all defendants named in the original complaint, with the exception of plaintiff's inadequate medical care claims against Nurse Nina, are due to be REFERRED to the magistrate judge for further proceedings consistent with this opinion. The claims against Nurse Nina are due to be DISMISSED for failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2).

This action is due to be REFERRED to the magistrate judge for further proceedings.

An appropriate order will be entered.

Done this 8th day of March, 2005.

A handwritten signature in black ink, appearing to read "U.W. Clemon", written over a horizontal line.

U.W. Clemon
Chief United States District Judge